



2 August 2012

The Research Director  
State Development, Infrastructure and Industry Committee  
Parliament House  
George Street  
Brisbane Qld 4000

PMB 30 Cairns Mail Centre  
Queensland 4871 Australia  
**Phone:** +61 7 40603240  
**Fax:** +61 7 40603234  
**Email:** chuula@bigpond.com  
**Web:** www.kaanjungaachi.com.au  
**ABN:** 74 277 585 078 **ICN:** 4024

Via email: [sdiic@parliament.qld.gov.au](mailto:sdiic@parliament.qld.gov.au)

Dear Director,

Please receive the submission of the Chuulangun Aboriginal Corporation to the Inquiry into the future and continued relevance of government land tenure across Queensland.

If any further details or clarification of this submission are required I can be contacted by email at [chuula@bigond.com](mailto:chuula@bigond.com) or by telephone on 07 40603240.

Sincerely,

**David Claudie**

Kuuku I'yu Northern Kaanju Traditional Owner Custodian  
CEO, Chairman  
Chuulangun Aboriginal Corporation

# **Submission to inquiry into the future and continued relevance of government land tenure across Queensland**

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**Chuulangun Aboriginal Corporation**

PMB 30 | Cairns Mail Centre | Qld 4871

E-mail: [chuula@kaanjungaachi.com.au](mailto:chuula@kaanjungaachi.com.au) | Web: [www.kaanjungaachi.com.au](http://www.kaanjungaachi.com.au)

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## **Introduction**

This submission considers in particular the needs and aspirations of Traditional Owners in regards to the future and continued relevance of government land tenure in Queensland. It is written from the perspective of Kuuku I'yu Northern Kaanju people living on homelands centred on the upper Wenlock and Pascoe Rivers in Cape York Peninsula. As such this submission has a focus on land issues affecting Cape York Peninsula and provides examples and discussion based on the experiences of its authors with land tenure, ownership and management issues affecting their homelands.

The Kuuku I'yu Northern Kaanju Ngaachi encompasses some 840,000 hectares and overlays various land tenures including Aboriginal Freehold, pastoral lease, homestead lease, permits to occupy, reserves and National Parks. Despite much of our homelands being under 'outside' management, we have developed strong relationships with the land owners and managers including with pastoralists and we are joint holders of a Permit to Occupy on Moreton Telegraph Station at the northern part of our homelands. As Traditional Owner Custodians we are in the best position to manage our land and will do so according to our own systems of governance and management, and on our own terms.

## **Representation and governance**

The Chuulangun Aboriginal Corporation (Chuulangun), when implementing its plans for homelands and economic development and cultural heritage protection, has come up against various roadblocks over the years in relation to representation and governance. In 2011 Chuulangun prepared a Discussion Paper "Representation and Governance" which discusses the issues surrounding the tenure resolution process and its outcomes in an effort to encourage the Government to review and ensure that this program is operating efficiently, effectively and ethically in relation to the rights and interests of the correct Traditional Owner Custodians. In particular it looks at the areas of concern to Kuuku I'yu Northern Kaanju people, considers the current model of CYTRIG (Cape York Tenure Resolution Implementation Group) and processes, and looks at alternative models or approaches to this process. It is important to make a number of points from this paper and earlier papers by Chuulangun, as they have strong relevance for this inquiry.

## **Traditional Owner rights and responsibilities in regard to land tenure**

Very little legislation, especially regarding land tenure, and natural and cultural resource management, is shaped with input from Traditional Owner Custodians, and it rarely reflects their rights and interests or their governance, autonomy and Indigenous social structures. There is a need to engage Traditional Owner Custodians and their representatives (that have been chosen by them) in a program of review of government land tenure, legislation and land tenure processes to better consider and reflect Traditional Owners' rights and interests in social, economic and environmental matters.

However, a history of rights conflicts, paternalism, policy failure, lack of trust and inability to adequately address Indigenous needs have led to seriously damaged relationships between Government and Indigenous peoples. This is only compounded by poor cross-cultural communication between Government and Traditional Owners. There is a need for purpose built

engagement structures with highly skilled personnel in the area of policy and program development, land tenure reform and assessment of the future of government land tenure in Queensland.

### **Aboriginal Land Act (ALA) reform**

The land holding acts of Government take a regional approach to land tenure systems that is inappropriate and non-Indigenous and thus inherently problematic and goes against the proper recognition of Indigenous title and governance. Land holding groups including many land trusts are seen as 'categorically defined, bounded and non-negotiable'<sup>1</sup>. The problem with such groups is that what is presented on paper does not necessarily reflect what exists in reality on the ground where the action is taking place in terms of land management and Traditional Owners living and working on country. From our perspective as Traditional Custodians living on homelands a number of land trusts and Indigenous land holding bodies are artificial groups that have been legitimised by government policies and processes.

### **Indigenous access and use agreements on government land**

The process of coming to agreement in regard to Indigenous access and use on government land tenure is fraught with complexities and inconsistencies. Traditional Owner Custodians have the right to choose their own representatives in regard to the development of access and use agreements on their homelands. Agreements should be instigated by the correct Traditional Owners for a particular area and they should have independent legal advice in regard to the making of agreements with Government and other parties. It is a native title right to choose one's own representation and this should be met in all future dealings in regard to land tenure, land use and management.

Facilitation of land dealings is a complex and fraught task for any organisation. In order to have the trust and confidence of Traditional Owners to be able to enter into discussions, the organisation facilitating the deals must be seen as operating with integrity and independence. Unfortunately this has not always been the case in recent dealings on Cape York with one particular facilitator organisation demonstrating obvious bias and an agenda that is against the wishes of a number of Traditional Owners.

It is recommended that the Queensland Government consider alternative options in relation to facilitators where any conflict of interest may exist or there may be a view that the facilitator is not independent. This is the only way to get the most out of land dealings. This could occur with a simple addition to the beginning of the land dealings of asking the Traditional Owners whether they wish to have representation and who they wish to represent them.

### **Different governance systems, boundaries, culture and customs**

Traditional governance and customary tenure is very different to the tenure arrangements of the Government. Lines on the Government's maps do not correlate to the Traditional Owners' customary boundaries. This can lead to confusion in relation to who is speaking for what country,

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<sup>1</sup> Bauman, T. and Williams, R. 2004 'The business of process research issues in managing Indigenous decision-making and disputes in land', *Research Discussion Paper No. 13*, Native Title Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra, page 11.

incorrect modelling for land trusts and issues of representation on land trusts. This has ramifications for the transfer of land to Aboriginal people (e.g. under ALA) in regard to boundaries of transferred land, contested boundaries and where boundaries of lands are relocated. It is important that the correct Traditional Owners are involved in this process.

One possible solution to this matter would be to change the mapping of tenure in Cape York so to be able to better reflect the traditional governance boundaries. In the event this is not possible, then the models used for land trusts need to be better considered.

Traditional Owner governance varies depending on the Traditional Owner group, language group and their culture and customs. These cultures and customs are not easily transferable and some differ to such a great extent that it would be impossible for them to work together in one entity (or land trust or land holding corporation).

In an effort to progress dealings quickly and efficiently, the Government has been pushing for multiple Traditional Owner groups to be placed into single land trusts. The only way this can work is if Traditional Owners want this to happen, the facilitator (undertaking the work) is trusted and truly independent and if the Traditional Owners involved have sufficient trust and confidence in each other and willingness to do the work. Where this is not possible – we recommend that separate land trusts be created and that the appropriate level of funding and resources are expended to ensure this happens.

### **The Cape York Peninsula Representation and Governance Group**

The Cape York Representation and Governance Group (CYPRaGG) is a proposal to assist government in negotiating Indigenous governance and representation. Governments and lawyers often describe Indigenous governance as ‘difficult’ and ‘vexed’, but it is neither of those things to us. No ‘expert’ can help negotiate these issues better than Aboriginal people themselves who have traditional connection through bloodline to particular country on Cape York Peninsula.

The CYPRaGG would facilitate the formation of land trusts, land holding entities and PBCs based on the tribal grouping which is the more appropriate level at which Aboriginal people govern and manage their country. The creation of separate land trusts or PBCs for each Traditional Owner group within a particular area would mean that administrative functions and capacity-building of each entity could then occur at a community level – in this way governance systems would be enabling the right to self-determination, autonomy and self-government at the Traditional Owner governance level.

A hybrid land trust is one where two or more Indigenous groups are shoved together into a single body corporate, under a different governance model to their own. In the case of the outcomes of the State land dealings under CYTRIG, these are ALA land trusts with a constitution, chairperson and board of directors. This is the case with the Mangkuma Land Trust which covers some 241,000 hectares of our homelands as well as a number of other land trusts on Cape York.

While this set up might work very well for the Queensland Government, experience in Cape York has shown that the only thing that these hybrid land trusts are good at is perpetuating disputes and injustices for Indigenous peoples who have already had enough. The problem is that a land trust chair who may have ‘the numbers’ in the community, may make a decision on behalf of the whole

land parcel. Not everyone given such a privilege does this but abuses of our Indigenous governance systems have been frequent and serious enough to warrant change. One example is the offering of other people's lands to a logging company without their knowledge (e.g. Future Corporation Joint Venture with Mangkuma Land Trust in 2003-04).

The implications of this for the transfer of land to Traditional Owners are that a trustee (e.g. a land trust under the ALA) might grant a lease for commercial purposes without obtaining the approval of the particular Traditional Owners for a given area. It is important that local advisory groups comprising of the correct Traditional Owners for an area provide advice and be major decision-makers in regard to lease entitlements and lease boundaries. Advisory groups must be comprised of the correct people for the land in question and not just any member of a land trust.

### **Environmental protection, homelands development, and the conservation economy**

Some legislation supports Traditional Owner Custodians to take opportunities to develop their preferred sustainable livelihoods on homelands, engage in employment, and participate in the conservation economy and sustainable development. However, there is a lack of coordinated strategies and investment in remote area development – e.g. tourism, the carbon market, natural resource management, and alternatives to mining – and this is holding back the ability for economic potentials to develop in remote homelands and communities. There is a direct role for government to facilitate an investment strategy in a remote area 'conservation economy' and in capacity-building for Indigenous landholders and entrepreneurs which would further support Indigenous people to access the benefits of their land which may have been transferred government land.

There is also an issue of equity. Historically, Indigenous people have been denied the benefits of economic development taking place on their homelands, and this continues in many forms today. A social justice approach to the issue would result in a range of compensatory and advancement measures, as of right. Traditional Custodians need more funds at the grass roots level, and better structural arrangements and investment strategies, to enable them to benefit economically from their rights and interests in land.

Contemporary environmental approaches are integrating Traditional Custodian rights and responsibilities to look after country. Unfortunately, centralisation of effort under land and sea centres controlled by local councils and regional city-based bodies is diverting resources, frustrating or limiting efforts on homelands, and failing to deliver and secure conservation and economic outcomes. There is a need for government agencies to recognise, support and work with locally originated, owned, operated and controlled Indigenous organisations on country.

Studies show that people living and working on their homelands benefit from a range of social, cultural, economic and health outcomes, as well as improved employment, training and capacity-building opportunities. Despite this, there is inadequate recognition and limited support of (and even hostility towards) the value of a homelands approach to development in remote areas. Government needs to steer away from restrictive and collectivised approach to Indigenous development issues under the narrow frameworks of welfare reform and dependency and move away from the assimilationist mentality which concentrates programs and service delivery into centralised communities and 'growth' towns.

## **Conclusion**

We urge the government to support an agenda of reform of the land tenure system that will see recognition of proper Indigenous governance, law, kinship and bloodline, as well as the unity of Indigenous customary intellectual property and the land, waters and resources. If the government is serious about this there needs to be reform of the ALA, serious overhaul of the State land dealings processes, and proper assessment of the future and continued relevance of government land tenure in Queensland that considers the rights, interests and aspirations of the correct Traditional Owner Custodians for a given area. New legislation and reform of existing legislation should be formulated 'from the inside-out' and appropriately recognise the legitimacy of Indigenous customary law, governance, kinship, bloodline and intellectual property. At the same time, Indigenous law needs to be recognised in all Acts of government.